

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2015AP2092-CR
2015AP2093-CR**

**Cir. Ct. Nos. 2011CF4004
2011CF4192**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AMAN DEEP SINGH,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. Aman Deep Singh, *pro se*, appeals the order denying in part his request for sentence credit and otherwise denying his motion for postconviction relief.¹ He sets forth five claims on appeal. Singh’s claims for sentence credit and sentence modification fail because they are moot and his remaining claims fail because they are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Accordingly, we affirm.

BACKGROUND

¶2 Singh has sought relief from this court before.² *See, e.g., State v. Singh*, Nos. 2014AP846-CR, 2014AP847-CR, 2014AP1601, & 2014AP1602, unpublished slip op. (WI App Feb. 10, 2015) (*Singh II*); *State v. Singh*, Nos. 2012AP2709-CR & 2012AP2710-CR, unpublished op. and order (WI App Dec. 10, 2013) (*Singh I*). For purposes of the instant appeals, it suffices to repeat:

These consolidated appeals arise out of two circuit court cases. In Milwaukee County Circuit Court case No. 2011CF4004, Singh was charged as follows: count one, obtaining a controlled substance by misrepresentation, second and subsequent offense[, contrary to WIS. STAT. §§ 961.43(1)(a), 961.48(1)(b) (2011-12)³]; count two, attempting to obtain a controlled substance by misrepresentation, second and subsequent offense[, contrary to §§ 961.43(1)(a), 961.48(1)(b) (2011-12)]; and count three, obtaining a prescription drug by fraud[, contrary to WIS. STAT. § 450.11(7)(a) (2011-12)]. In Milwaukee County Circuit Court case No. 2011CF4192,

¹ We ordered these cases consolidated for purposes of briefing and disposition.

² Singh acknowledges that these cases “have been in a state of perpetual litigation for years.” We will not get into the details of the various petitions that have been denied by this court and by the Wisconsin Supreme Court.

³ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Singh was charged with one count of obtaining a controlled substance by misrepresentation, second and subsequent offense[, contrary to §§ 961.43(1)(a), 961.48(1)(b) (2011-12)].

Singh pled guilty to counts one and three in case No. 2011CF4004 and to the count charged in case No. 2011CF4192.

Singh II, Nos. 2014AP846-CR, 2014AP847-CR, 2014AP1601, & 2014AP1602, unpublished slip op. ¶¶2-3.

¶3 In **Singh I**, we summarily affirmed Singh's *pro se* appeal of the circuit court order denying his motion to withdraw his guilty pleas and the order denying his reconsideration motion. **Id.**, Nos. 2012AP2709-CR & 2012AP2710-CR, unpublished op. and order at 1.

¶4 In **Singh II**, we affirmed the orders denying Singh's *pro se* motion for sentence modification and his WIS. STAT. § 974.06 motion for postconviction relief. **Singh II**, Nos. 2014AP846-CR, 2014AP847-CR, 2014AP1601, & 2014AP1602, unpublished slip op. ¶1.

¶5 In 2015, Singh again sought postconviction relief. He raised three distinct claims that are relevant to this appeal: (1) he claimed he was entitled to sentence credit on the underlying convictions; (2) he moved for sentence modification; and (3) he argued that the underlying crimes related to a medical condition, namely his addiction to controlled substances, and that his prison sentence constituted cruel and unusual punishment under the Eighth Amendment.

¶6 The postconviction court concluded that **Escalona** barred Singh's Eighth Amendment claim and additionally, found the claim to be frivolous. The

postconviction court granted in part and denied in part Singh's request for sentence credit and denied his motion for sentence modification.

¶7 The postconviction court denied Singh's motion for reconsideration.

DISCUSSION

A. *Mootness*

¶8 Singh argues that the postconviction court erred when it denied him sentence credit and when it denied his motion for sentence modification. After briefing in these appeals was completed, the State filed a motion for summary disposition of Singh's sentence credit and sentence modification claims on grounds that Singh's recent discharge from his sentences rendered those claims moot.⁴ The State submits that because Singh is no longer on supervision for the sentences imposed in these cases, our determination of his sentence credit and sentence modification claims will have no practical benefit for Singh. *See Ehlinger v. Hauser*, 2010 WI 54, ¶66, 325 Wis. 2d 287, 785 N.W.2d 328 ("A court generally will not engage in an exercise which circumstances have rendered purely academic."). Singh disagrees and asserts that resolution of these issues is required because he is entitled to an accurate judgment of conviction.

¶9 "An issue is moot when its resolution will have no practical effect on the underlying controversy." *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3,

⁴ To support its motion, the State submitted Discharge Certificates from the Department of Corrections to this effect. *See Sisson v. Hansen Storage Co.*, 2008 WI App 111, ¶11, 313 Wis. 2d 411, 756 N.W.2d 667 (appellate court may take judicial notice of matters of record in government files under WIS. STAT. § 902.01).

233 Wis. 2d 685, 608 N.W.2d 425. We typically decline to consider such issues.

Id. Under certain circumstances, however, we will deviate from this rule and consider a moot point:

[I]f the issue has great public importance, a statute's constitutionality is involved, or a decision is needed to guide the trial courts. Furthermore, we take up moot questions where the issue is likely of repetition and yet evades review because the situation involved is one that typically is resolved before completion of the appellate process.

Id. (two sets of quotation marks and citations omitted).

¶10 We are not persuaded that deviating from the general rule is warranted here. First, Singh's sentence credit and sentence modification claims are fact-specific based on the rather unusual circumstances of his cases.⁵ See generally *State v. Johnson*, 2009 WI 57, ¶23, 318 Wis. 2d 21, 767 N.W.2d 207 (noting "the almost endless variety of fact patterns that tend to emerge under the sentence credit statute"). Second, other than a fleeting reference to the statute addressing judgments of conviction, see WIS. STAT. § 972.13, Singh does not provide any legal support for his contention that he is entitled to a precise calculation of sentence credit despite the fact that he is no longer on supervision. While we recognize Singh is *pro se*, it is nonetheless inappropriate for us to "abandon our neutrality to develop arguments" for him. See *Industrial Risk*

⁵ While on probation for a 2008 Waukesha offense, Singh committed the underlying offenses in Milwaukee County. See *State ex rel. Singh v. Kemper*, 2016 WI 67, ¶¶144-45, 371 Wis. 2d 127, 883 N.W.2d 86 (Ziegler, J., concurring in part, dissenting in part). In 2011, Singh's probation in the Waukesha case was revoked and his stayed sentence was imposed. See *id.*, ¶146. In 2015, the Waukesha County circuit court modified Singh's sentence. See *id.*, ¶149. Singh's sentence credit and sentence modification claims in these appeals stem from the 2015 Waukesha modification.

Insurers v. American Eng’g Testing, Inc., 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82; *see also State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (“We cannot serve as both advocate and judge.”). Singh’s sentence credit and sentence modification claims are moot.

B. Procedural Bar

¶11 Singh also argues that his convictions must be vacated because it is unconstitutional to criminally prosecute a non-trafficking drug addict who has done nothing more than obtain possession of the narcotic to which he is addicted. In addition, Singh contends that one of the statutes he was convicted of violating, WIS. STAT. § 961.41(1)(a) (2011-12), has been repealed by implication. Finally, Singh argues that attempting to obtain a prescription drug by forgery pursuant to WIS. STAT. § 450.11(7)(a) (2011-12), another statute he was convicted of violating, is not a crime.

¶12 When a defendant’s claim for relief could have been, but was not, raised on direct appeal or in a prior WIS. STAT. § 974.06 motion, the claim may not be presented in a later § 974.06 motion unless the defendant presents a sufficient reason for his or her previous failure to raise the claim. WIS. STAT. § 974.06(4); *Escalona*, 185 Wis. 2d at 185. To circumvent *Escalona*’s procedural bar, Singh submits that his claims arise under WIS. STAT. § 973.13. Singh is wrong.

¶13 WISCONSIN STAT. § 973.13 provides: “In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings.”

Singh seems to argue that if he prevails on one of the aforementioned claims, then either the sentence imposed or his conviction must be vacated. Should that occur, it would render excessive any sentence he served and § 973.13 should be applied to correct the excessive sentences.

¶14 Singh has no basis for seeking relief under WIS. STAT. § 973.13. Here, Singh's sentences were within the statutorily authorized maximum penalties. We agree with the State: "Asserting that a sentence constitutes cruel and unusual punishment, [under] the Eight Amendment[,] does not transform it into an excessive sentence claim that falls within ... § 973.13's ambit, which is focused solely on correcting sentences that exceed a statutory maximum." To allow Singh to pursue his current claims now, under the guise of a § 973.13 motion, would undermine *Escalona*'s primary purpose of achieving finality in litigation. *See Escalona*, 185 Wis. 2d at 185 ("We need finality in our litigation.").

¶15 Singh's remaining two claims are grounded in statutory interpretation: (1) whether WIS. STAT. § 961.43(1)(a) should be considered repealed by implication; and (2) whether attempting to obtain a prescription drug by forgery is a crime.

¶16 Despite Singh's attempt to mask these issues as excessive sentence claims, both arguments go to the statutory basis for the charges against him. What Singh is really seeking is postconviction relief under WIS. STAT. § 974.06. Section 974.06 motions, however, are limited in scope to matters of jurisdictional or constitutional dimension. *See State v. Carter*, 131 Wis. 2d 69, 80-82, 389 N.W.2d 1 (1986). Because these claims are statutory in nature, they cannot form the basis for a § 974.06 motion.

¶17 Singh submits in his reply that his claims fall under an exception to *Escalona* set forth in *State v. Howard*, 211 Wis. 2d 269, 286-88, 564 N.W.2d 753 (1997), *overruled on other grounds by State v. Gordon*, 2003 WI 69, ¶40, 262 Wis. 2d 380, 663 N.W.2d 765. At the outset we note that Singh first advances this argument in his reply brief and we could reject it on this basis alone. *See State v. Reese*, 2014 WI App 27, ¶14 n.2, 353 Wis. 2d 266, 844 N.W.2d 396 (“This court need not address arguments that are raised for the first time on appeal.”).

¶18 The *Howard* court held that a prisoner established a sufficient reason for failing to raise a claim during the prisoner’s first appeal when the supreme court later interpreted a governing statute in a way that created a “new rule of substantive law.” *Id.*, 211 Wis. 2d at 287-88. Singh’s circumstances are not at all like those in *Howard*.⁶

¶19 Singh does not identify a new rule of substantive law developed after his earlier litigation. He likewise has not identified any decision interpreting the statutes as he proposes. Insofar as Singh believes his legal theories are supported by case law, that support was available to Singh well before he filed his prior appeals.

¶20 “Successive, and often reformulated, claims clog the court system and waste judicial resources.” *State ex rel. Macemon v. Christie*, 216 Wis. 2d

⁶ As additional support Singh cites *Montgomery v. Louisiana*, 136 S. Ct. 718, 731-32 (2016) (“Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.”). Again, we are not convinced that the holding in *Montgomery* applies to the circumstances presented.

337, 343, 576 N.W.2d 84 (Ct. App. 1998). Because Singh has not presented a sufficient reason for his serial litigation, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

